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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/774,962	01/31/2001	Jim McCollum	826	6020

7590

05/27/2004

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 05/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliance With 37 CFR 1.192(c)	Application No. 09/774,962	Applicant(s) MCCOLLUM ET AL.	
	Examiner Christopher Boltorff	Art Unit 3618	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--


The Appeal Brief filed on 08 March 2004 is defective for failure to comply with one or more provisions of 37 CFR 1.192(c). See MPEP § 1206.

To avoid dismissal of the appeal, applicant must file IN TRIPLICATE a complete new brief in compliance with 37 CFR 1.192(c) within the longest of any of the following three **TIME PERIODS**: (1) **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer; (2) **TWO MONTHS** from the date of the notice of appeal; or (3) within the period for reply to the action from which this appeal was taken. **EXTENSIONS OF THESE TIME PERIODS MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☒ The brief does not contain the items required under 37 CFR 1.192(c), or the items are not under the proper heading or in the proper order.
2. ☒ The brief does not contain a statement of the status of all claims, pending or cancelled, or does not identify the appealed claims (37 CFR 1.192(c)(3)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 1.192(c)(4)).
4. ☐ The brief does not contain a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters (37 CFR 1.192(c)(5)).
5. ☐ The brief does not contain a concise statement of the issues presented for review (37 CFR 1.192(c)(6)).
6. ☐ A single ground of rejection has been applied to two or more claims in this application, and
 - (a) ☐ the brief omits the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet presents arguments in support thereof in the argument section of the brief.
 - (b) ☐ the brief includes the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief.
7. ☒ The brief does not present an argument under a separate heading for each issue on appeal (37 CFR 1.192(c)(8)).
8. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 1.192(c)(9)).
9. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet

Continuation of 9. Other (including any explanation in support of the above items): Issues 3, 4, and 5 listed in the brief question whether the claims rejected under 35 U.S.C 103(a) are "anticipated." However, anticipation does not apply to rejections based upon a combination of references. Issue 5 questions the combination of Allen and Pratt et al., but the final rejection does not apply Pratt et al. to any of the claims. In addition to providing an argument under a separate heading for each issue on appeal, the arguments must correspond to the stated issues. In regard to the grouping of the claims, claim 6 is identified as forming a first group that stands alone and as being a part of a second group that stands or falls with claim 1. A claim can only be in one group and cannot both stand alone and stand or fall with another claim. Claim 3 is identified as standing or falling with claim 1 but is argued separately in section 2 of the arguments, which suggests that claim 3 is a separate group. Claims 6, 4, and 8 are identified as standing or falling separately, but each of these claims is not separately argued in support of the assertion that these claims stand or fall separately from one another. Also, merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable. Appellant's arguments must state how each separate claim group distinguishes over the prior art. Appellant should carefully review the brief for accuracy and clarity. Failure to present a proper brief may result in the abandonment of the appeal.


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5/20/04